

# **EXHIBIT 10**



11/1 T

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

CLM DESIGN, INC. (d/b/a SON  
INTERNATIONAL)

SERIAL NO. 627,482

FOR: ROUND BEACH TOWEL DESIGN

Trademark Attorney  
Janice O'Lear  
Law Office V

RESPONSE

Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Sir:

Applicant submits this paper in response to the  
Priority Office Action dated October 16, 1987. In the Priority  
Office Action, Trademark Attorney O'Lear required submission of:

1. A videotape of the television commercials which  
promoted Applicant's round beach towel; and
2. The sales and advertising figures for applicant's  
round beach towel.

Applicant submits herewith the declaration of the President of  
CLM Design, Inc., Clemens E. Franek, with exhibits including a  
videotape which includes the requested information. (See  
Attachment A). Applicant also submits herewith the declaration  
of a retailer which inadvertently was not submitted with  
applicant's first Response. (See Attachment B).

RECEIVED  
JAN 4 1988  
U.S. PATENT & TRADEMARK OFFICE  
WASHINGTON, D.C.  
Dec 16, 1987  
Raymond N. Nimrod  
Raymond N. Nimrod  
Dec 16, 1987

101

94

A. Advertising Expenditures

In an effort to obtain maximum exposure of its round beach towel, CLM Design reached an agreement with television star Woodrow ("Woody") Harrelson from the show "Cheers". CLM Design and Mr. Harrelson agreed upon a long-term commitment whereby Mr. Harrelson would head up the national promotion campaign of CLM Design, as Vice-President of Marketing and Public Relations. In particular, Mr. Harrelson would utilize his status as a national television celebrity to obtain extensive publicity for the CLM Design round beach towel at little or no direct cost. (Franek Dec. ¶5).

As compensation, Mr. Harrelson received a 10% share of CLM Design at a substantially reduced price, along with an option to increase his share another 8%. At the time of the agreement, the fair market price of CLM Design stock was \$37,500 for each 1% share of CLM Design stock. This price was negotiated between A.T. Cross Co. (manufacturers of Cross Pens) and CLM Design when A.T. Cross Co. obtained warrants to purchase CLM Design stock. Thus, the value of the 18% share is \$675,000. In lieu of paying the full \$675,000, Mr. Harrelson paid only \$50,000 and agreed to extensively promote the round beach towel. Thus, the price discount of \$625,000 is Mr. Harrelson's compensation for his work in advertising and promoting the CLM Design round beach towel. (Franek Dec. ¶6).

Mr. Harrelson has been able to obtain extensive publicity for the CLM Design round beach towel design at little or no direct cost. Likewise, others at CLM Design have also

worked actively to obtain extensive publicity for the CLM Design round beach towel at little or no direct cost. Due to these efforts, the bulk of the publicity for the CLM Design round beach towel has been obtained at little or no direct cost. (Franek Dec. ¶7).

CLM Design has expended \$63,000 in direct advertising and promotional costs in addition to Mr. Harrelson's \$625,000 stock compensation. (Franek Dec. ¶8). Thus, CLM Design's total expenditure on advertising in cash and stock has been \$688,000.

B. Promotions

CLM Design has promoted its round beach towel on twelve television shows. The spots on these shows were not commercials which would have resulted in substantial direct costs. Rather, CLM Design has obtained extensive free publicity for its round beach towel on television, due to the celebrity status of Mr. Harrelson and the efforts of others at CLM Design. The approximate total viewership of these twelve television shows is over 43,000,000 viewers.

A videotape is enclosed herewith as Exhibit 1 of the Franek Declaration. The videotape shows segments of the following programs which featured CLM Design's round beach towels: The Oprah Winfrey Show; Entertainment Tonight; MTV; Good Morning America; The Tonight Show; and the WLNE Evening News (Providence). Applicant has been unable to obtain videotapes of

the other six television shows which featured CLM Design's round beach towel. However, the six television shows presented on the videotape represent over 41,000,000 viewers out of the total of 43,000,000 viewers for all twelve shows.

The efforts of Mr. Harrelson and others at CLM Design have also resulted in extensive publicity in newspapers. Seventy-four newspapers across the country have run stories regarding CLM Design round beach towel. The total readership for these newspapers is over 20,000,000 readers. (Franek Dec. ¶10). Moreover, United Press International ran a story regarding CLM Design's round beach towel which was published by numerous newspapers across the country. (Franek Dec. ¶11). Sixty magazines have published articles regarding CLM Design's round beach towel. The total readership of these magazines is over 35,000,000 readers. (Franek Dec. ¶12). The majority of this extensive promotion has been obtained at no direct cost due to the efforts of Mr. Harrelson and others at CLM Design. (Franek Dec. ¶12).

C. Sales Figures

Since August, 1985, over 30,000 of CLM Design's round beach towels have been sold for approximately \$1,400,000. Furthermore, the extensive promotion campaign has resulted in steadily increasing sales. CLM Design has sold over 8,000 of its round beach towels in the last two months alone.

D. Secondary Meaning

Applicant submits that it has established that its ROUND BEACH TOWEL DESIGN mark has acquired secondary meaning and is entitled to registration. Applicant respectfully directs the Examining Attorney to the remarks and exhibits in Applicant's first Response, dated September 21, 1987, including the nineteen declarations from members of the retail beach towel industry. In addition, applicant submits the declaration of an additional retailer which was inadvertently omitted from the earlier filed response.

The declarations of these twenty retailers establish that the aforementioned promotion of CLM Design's round beach towel, coupled with the extensive use and uniqueness of the round shape, has resulted in the ROUND BEACH TOWEL DESIGN mark acquiring secondary meaning. These declarations show that the ROUND BEACH TOWEL DESIGN mark distinguishes applicant's goods from the goods of others in the marketplace.

The evidence of record overwhelmingly establishes that the ROUND BEACH TOWEL DESIGN mark sought to be registered distinguishes Applicant's product from the other brands of towels on the marketplace. The mark sought to be registered has obtained secondary meaning, is distinctive of applicant's goods, and accordingly is not merely descriptive. The mark is entitled to registration of the Principal Register.

For the reasons stated above, applicant respectfully requests that this application be allowed and that the mark be published.

Respectfully submitted,

By: Raymond N. Nimrod  
Raymond N. Nimrod  
Reg. No. 31,987

NEUMAN, WILLIAMS, ANDERSON & OLSON  
77 West Washington Street  
Chicago, Illinois 60602  
(312) 346-1200

Dated: December 16, 1987

A

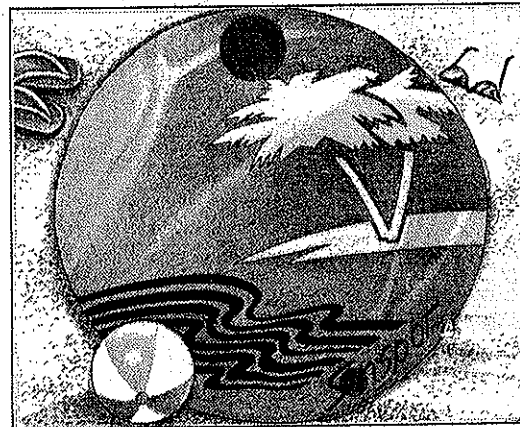
110

100



Genise EXHIBIT 2008  
Genise v. Desautels  
Interference 104,835

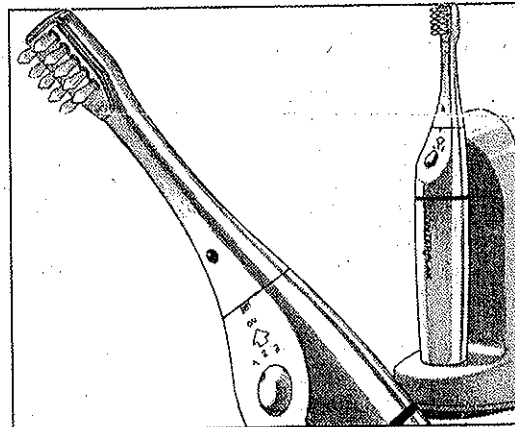
# ou at Woodies!



## Round-up new Sunspot beach towel

Find your spot in the sun without moving your towel around. Here's a big 72 inch diameter solar print cotton towel that's perfect for two. Includes one matching personal sun towel. 2-pc. set, 49.99

Towels



## Fight plaque the new Interplak™ way

A technological breakthrough: Interplak™ Home Plaque Removal Instrument bristles rotate 4200 times a minute, reversing direction to scour and stimulate gums. Rechargeable cordless, 2 brush heads. 99.99

Culinary Arcade

# WOODWARD & LOTHROP 8861

*Woodies is my way*

Sunday all stores 12 to 6 (except Annapolis, Columbia, White Marsh)

91



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: )  
CLM DESIGN, INC. (D/B/A SON )  
INTERNATIONAL) Janice O'Lear  
SERIAL NO. 627,482 ) Trademark Attorney  
FOR: ROUND BEACH TOWEL DESIGN ) Law Office V

DECLARATION

1. I am the President of the applicant, CLM Design, Inc., and have been intimately involved in the design, production, promotion, sales and financing of the round beach towel since its inception in August of 1985.

2. As a result of my involvement with CLM Design, Inc. and as part of my duties as President, I am familiar with the entire beach towel industry including the products of competitors, the distribution channels of competitors, the general sales efforts of competitors and the purchasing habits and tendencies of potential customers.

3. CLM Design adopted a beach towel design having a round shape so that the original, distinctive and peculiar appearance of the beach towel would distinguish it from the beach towels of others and identify the beach towel as coming from a single source.

///

4. The round shape of the CLM Design beach towel is distinctive as compared to all other beach towels and the round shape distinguishes the CLM Design product from other brands of beach towels.

5. CLM Design has extensively promoted its round beach towel. In an effort to obtain maximum exposure of its round beach towel, CLM Design reached an agreement with television star, Woodrow ("Woody") Harrelson from the television show "Cheers". CLM Design and Mr. Harrelson agreed upon a long-term commitment whereby Mr. Harrelson would head up the national promotional campaign of CLM Design, as Vice-President of Marketing and Public Relations. In particular, Mr. Harrelson would utilize his status as a national television celebrity to obtain extensive publicity for the CLM Design round beach towel at little or no direct cost.

6. As compensation, Harrelson received a 10% share of CLM Design at a substantially reduced price, along with an option to increase his share another 8%. At the time of the agreement, the fair market price of CLM Design stock was \$37,500.00 for each 1% share of CLM Design stock. This price was negotiated between A. T. Cross Co. (manufacturers of "Cross" pens) and CLM Design when A. T. Cross Co. obtained warrants to purchase CLM Design stock. Thus, the value of the 18% share is \$675,000. In lieu of paying the full \$675,000, Mr. Harrelson agreed to extensively promote the round beach towel and thus pay only \$50,000. The difference of \$625,000 is Mr. Harrelson's compensation for his work in advertising and public relations.

7. As a television celebrity, Mr. Harrelson has been able to obtain extensive publicity for the CLM Design round beach towel at little or no direct cost. Others at CLM Design have also worked actively to obtain extensive publicity for the CLM Design round beach towel at little or at no direct cost. Due to these efforts, the bulk of the publicity for the CLM Design round beach towel has been obtained at little or no direct cost.

8. In addition to Mr. Harrelson's \$625,000 stock compensation, CLM Design has expended \$63,000 in advertising and promotional costs.

9. CLM Design has promoted its round beach towel on 12 television shows, many of which are broadcast nation-wide. The spots on these shows were not commercials. CLM Design has obtained extensive free publicity for its round beach towel on television, due to the celebrity status of Mr. Harrelson and the efforts of others at CLM Design.

I contacted personnel at each of the television shows to determine the approximate viewership of each of the television shows which featured the round beach towel. The identification of each show, and its approximate viewership, are as follows:

<u>TELEVISION SHOW</u>	<u>APPROXIMATE VIEWERS</u>
The Oprah Winfrey Show	8,000,000
Good Morning America	5,000,000
Entertainment Tonight	18,000,000
The Tonight Show	
starring Johnny Carson	10,000,000
Mid Morning Los Angeles	29,000
Wil Shriner Show	72,000
Eye On LA	529,000
National College TV	52,000
Sun-Up	23,000
The Sally Jesse	
Raphael Show	1,000,000

MTV	500,000
WLNE Evening News (Providence)	<u>105,000</u>
TOTAL	43,310,000

Exhibit 1, enclosed herewith, is a videotape which shows the segments of the following programs which featured CLM Design's round beach towel: The Oprah Winfrey Show; Entertainment Tonight; MTV; Good Morning America; The Tonight Show; and The WLNE Evening News (Providence).

10. The efforts of Mr. Harrelson and others at CLM Design have also resulted in extensive publicity in newspapers. Seventy-four newspapers across the country have run stories regarding CLM Design's round beach towel. I contacted the circulation departments of each of those newspapers to determine the approximate readership of each paper. The identification of each newspaper and its approximate readership is set forth in Exhibit 2. The total readership for these newspapers is over 20 million readers.

11. United Press International ran a story regarding CLM Design's round beach towel. The story was published by numerous newspapers across the country.

12. The efforts of Mr. Harrelson and others at CLM Design have resulted in extensive publicity in magazines. Sixty magazines have published articles regarding CLM Design's round beach towel. The identification of these magazines and the approximate readership of each magazine is set forth in Exhibit 3, attached hereto. The total readership of these magazines is

over 35 million readers. The majority of such promotion has been obtained at no cost due to the efforts of Mr. Harrelson and others at CLM Design.

13. Since August 1985, over 30,000 of CLM Design's round beach towels have been sold for approximately \$1,400,000.00. The extensive promotion has resulted in steadily increasing sales. CLM Design has sold over 8,000 of its round beach towels in the last two months alone.

14. CLM Design's round beach towel has been carried by retailers at over 500 locations in 27 states and the District of Columbia.

15. All statements made herein of my knowledge are true, and all statements made on information and belief are believed to be true. The statements contained herein have been made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both under §1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Date: 12/1/87

By: 

Clemens E. Franek  
President of CLM Design, Inc.



Exhibit 1

1-5

106



EXHIBIT 1

Exhibit 1 is a videotape, enclosed herewith, showing segments of six television programs featuring CLM Design's round beach towel.

Exhibit 2

EXHIBIT 2

<u>NEWSPAPERS</u>	<u>APPROXIMATE READERS</u>
LOS ANGELES TIME	2,460,000
NEWSDAY (LONG ISLAND)	2,010,000
NEW YORK DAILY NEWS	2,952,000
TAMPA TRIBUNE	536,000
LOS ANGELES DAILY NEWS	327,000
TORRANCE DAILY BREEZE	226,000
LOS ANGELES HERALD EXAMINER	452,000
THE REGISTER (SANTA ANA)	590,000
ANADARKO OK NEWS	6,000
ASHLAND OR TIDINGS	5,500
VIRGINIA MN MESABI NEWS	32,000
CHEYENNE WY STATE TRIBUNE	11,000
HIBING MN TRIBUNE	22,000
CHICAGO HERALD ROLLING MEADOWS	137,000
FLORIDA TODAY	75,000
WARWICK BEACON	60,000
SAVANNAH NEWS	130,000
GAINESVILLE SUN	22,000
DAILY VARIETY	2,500,000
USA TODAY	1,170,000
KENT COUNTY DAILY TIMES	42,000

117

109

NEWSPAPERSAPPROXIMATE READERS

WOONSOCKET CALL	62,000
NARRAGANSETT TIMES	35,000
PROVIDENCE JOURNAL	313,000
COLUMBIA MISSOURIAN	10,000
SOUTH LAKE TAHOE TRIBUNE	10,000
ROSEVILLE CA PRESS TRIBUNE	15,000
EDMOND OK SUN	18,000
KLAMATH FALLS OR HERALD & NEWS	38,000
TYRONE PA HERALD	3,600
KEY WEST FL CITIZEN	15,000
PRESCOTT AZ EVENING COURIER	13,000
KENOSHA WI NEWS	60,000
MEDFORD MA MERCURY	5,000
INDEPENDENCE MO EXAMINER	21,000
RICHMOND VA NEWS-LEADER	111,000
MALDEN MA NEWS	13,000
BEND OR BULLETIN	40,000
CHICAGO SUN TIMES	1,299,000
WOOBURN MA TIMES CHRONICLE	15,000
ALPENA MI NEWS	13,000
CHARDON OH GEAUGA TIMES LEADER	9,000
CHICAGO ELK GROVE EDITION	137,000
CHICAGO HERALD-HANOVER PARK EDITION	137,000
HOMESTEAD FL NEWS LEADER	12,000
GRENADA MS SENTINEL STAR	5,000
MELROSE MA NEWS	3,000

NEWSPAPERSAPPROXIMATE READERS

CAPE CORAL FL BREEZE	4,000
WILLIMANTIC CT CHRONICLE	11,000
COLUMBUS OH REPORTER	50,000
NEW YORK NEWS	2,952,000
MEDINA OH GAZETTE	15,000
HAGERSTON MD HERALD	81,000
GALLIPOLIS OH TRIBUNE	18,000
ST. MARYS OH LEADER	6,000
BRYAN OH TIMES	11,000
ASHTABULA OH STAR BEACON	20,000
CONNEAUT OH NEWS HERALD	5,000
WEST HOLLYWOOD TODAY	50,000
CHICAGO HERALD BARRINGRON EDITION	137,000
WOOSTER OH RECORD	26,000
SANTA MONICA EVENING OUTLOOK	39,000
ATLANTIC CITY PRESS	173,000
AUBURN CA JOURNAL	26,000
MANCHESTER NH UNION LEADER	66,000
EVANSVILLE IN COURIER	64,000
ABBEVILLE LA MERIDIONAL	9,000
READING MA TIMES CHRONICLE	19,000
FRANKFORT IN TIMES	8,000
PORTLAND ME PRESS HERALD	60,000
DAILY NEWS RECORD	22,826
PALM BEACH DAILY JOURNAL	

Exhibit 3

EXHIBIT 3

<u>MAGAZINES</u>	<u>APPROXIMATE READERS</u>
FAMILY CIRCLE	6,553,883
GOOD HOUSEKEEPING	5,141,693
LADIES CIRCLE	79,255
HIGH SCHOOL SPORTS	520,000
SPORTSTYLE	25,524
ADVERTISING AGE	88,937
16 MAGAZINE	158,790
SURFING	85,400
HOLLYWOOD INSIDER	572,000
HOLLYWOOD CLOSE-UP	550,000
PURPLE COW	40,000
CAMPING MAGAZINE	7,800
TOY & HOBBY WORLD	18,201
LA STYLE	50,000
YOUNG FASHIONS	23,000
COLLEGE STORE	8,278
SWIMMING POOL AGE & SPA	15,075
TOTAL HEALTH	70,000
TEEN BEAT	135,591
ADVENTURE MAGAZINE	44,000
LICENSING TODAY	18,000
MEN'S LOOK	

MAGAZINES...OXIMATE READERS

TV GUIDE	16,874,477
OUTSIDE BUSINESS	12,565
TIGER BEAT	262,000
HUMPTY DUMPTY	350,000
POTENTIALS MARKETING	67,400
ORANGE COUNTY MAGAZINE	28,500
LINENS, DOMESTICS & BATH PRODUCTS	10,600
HOME FURNISHINGS	15,000
FITNESS	21,000
POOL & SPA NEWS	12,453
TEEN MAGAZINE	1,124,003
ORANGE COAST	
WOMEN'S WORLD	121,500
PLAYGIRL	641,016
RIGHT ON	154,278
RADIO & RECORDS	7,500
PLEASURE BOATING	19,050
DAILY NEWS RECORD	22,826
UNIVERSITY MAN	
CALIFORNIA LIFESTYLE	
TEEN ROCK	
TEEN USA	
VOLLEYBALL MAGAZINE	
CITY SPORTS	200,000
THE COMPETITORS	



MAGAZINESAPPROXIMATE READERS

ENTERTAINMENT TODAY	32,000
GIFT STATIONARY BUSINESS	
HONOLULU	32,224
EXERCISE FOR MEN ONLY	
GIFTS & DECORATIVE ACCESSORIES	34,372
MUSCLE & FITNESS	509,295
ENDLESS VACATION	437,091
HOLLYWOOD REPORTER	19,250
HOME TEXTILES TODAY	11,000
KNX-FM "ODYSSEY FILE"	26,000
FEMALE BODY BUILDING	
WOMEN TODAY	
YM	
WINDSURF	

**B**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF )  
CLM DESIGN, INC. (d/b/a )  
Son International) )  
 ) Janice O'Lear  
 ) Trademark Attorney  
 )  
 ) Law Office V  
 )  
FOR: ROUND BEACH TOWEL DESIGN )

DECLARATION

I have been involved in the retail store industry for 10 years.  
Currently, I am the President/Treasurer for PEEPERS OF HILTON  
HEAD, INC., a sunglass & beach accessory store, and I am  
responsible for buying, merchandising and running the daily  
business.

During my years in the retail store industry, I have become  
familiar with many towels and other textile products, and, in  
particular, beach towels.

As a result of my work experience, I am familiar with beach towels  
which have a round shape, and it is my belief and understanding  
that these beach towels having this particular configuration are  
manufactured by a single source.


It is my belief and understanding that the round shape of a beach  
towel has acquired in the retail store industry the ability to  
distinguish the CLM Design, Inc. (d/b/a Son International) brand  
beach towel from other beach towels.

Page Two  
Trademark Declaration  
CLM Design, Inc.  
(d/b/a Son International)

The overall visual impression of the configuration of a beach towel in a round shape identifies the CLM Design, Inc. (d/b/a Son International) brand beach towel, and it is my understanding and belief that it is unique since to my knowledge no competitive product has a similar shape or configuration.

The configuration of a round beach towel identifies the CLM Design, Inc. (d/b/a Son International) brand beach towel from a distance at which a normal person would be unable to read a label or name appearing on the beach towel.

It is my understanding and belief that any towel having the configuration of a round shape will come from the same source and would be of equal quality with other products from that same source.



Signature

Brenda L. Stevens

Name Printed

August 12, 1987

Date

125

118